

**REMARKS**

Applicant wishes to thank the Examiner for withdrawing the previous rejections based on Polz.

In accordance with the Examiner's recommendation, Applicant has canceled the restricted-out claims to advance prosecution, and to make it more convenient for managing the claims in case of a Notice of Allowance.

I. Allowed claims.

Applicant wishes to thank the Examiner for allowing claims 94-97 and 105-108.

II. Claim rejections under 35 U.S.C. § 102 based on Pelc.

Claims 56, 66, 67, 81, 103, 113, and 114 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,051,903 (Pelc). Applicant respectfully submits that the § 102 rejections should be rendered moot in view of the following remarks, and a Notice of Allowance is respectfully requested.

Claims 56 and 103

Claim 56 recites that the *image phase* value is *calculated using the phase value of the breathing cycle* (Emphasis Added). Claim 103 recites similar limitations. Pelc does not disclose or suggest these limitations. In particular, as discussed in the previous response, the cited passages (column 9, lines 15-38 and 55-65) of Pelz actually disclose phase values  $\phi(y)$  for a breathing cycle, which are derived from the respiration signals 79. However, there is nothing in Pelz that discloses or suggests using the phase value(s)  $\phi(y)$  to calculate any image phase (Note

that claim 56 describes that once the phase value is obtained, it is used to calculate an image phase).

According to page 2 of the Office Action, the § 102 rejections are maintained because Pelc allegedly discloses an image phase value  $y(t)$  that is determined from a reference phase value (citing to column 10, lines 32-55 of Pelc). However, Applicant respectfully notes that the value  $y(t)$  is actually a “respiration signal” (see column 9, lines 56-57), and  $y(t)$  is an “amplitude” of a breathing wave form (see also column 3, lines 50-56, and figure 3A). Thus, the value  $y(t)$  in Pelc is clearly not any image phase value, nor is it any image phase value that is calculated using a phase value of a breathing cycle. Also, note that column 10, lines 32-55 of Pelc describe that the value  $y(t)$  is “evaluated” against a histogram, and do not disclose or suggest that the value  $y(t)$  is any image phase value calculated using a phase value of a breathing cycle.

For at least the foregoing reasons, claims 56 and 103, and their respective dependent claims, should be allowable over Pelc.

Claim 56 also recites assigning the image phase value for the image data using a processor, wherein the act of assigning results in binning of the image data. Claim 103 recites similar limitations. Pelc also does not disclose or suggest these limitations. According to page 3 of the Office Action, column 10, lines 25-55 of Pelc allegedly disclose assigning image phase value for image data. However, the above cited passage of Pelc actually discloses assigning “gradients” to NMR signals, and does not disclose or suggest any image “phase” for the NMR image signals. It is important to note that the gradient  $Gy$  in Pelz is part of a selected pulse sequence (see figures 1 and column 8, lines 62-65), and thus, it is clearly not any image phase

that is calculated from any phase value. Also, the above cited passage does not disclose or suggest that the assigning of the “gradients” (to the extent that this is considered an “image phase value”, which is not true) itself results in binning of image data. For these additional reasons, claims 56 and 103, and their respective dependent claims, should be allowable over Pelc.

**CONCLUSION**

If the Examiner has any questions or comments, please contact the undersigned at the number listed below.

To the extent that any arguments and disclaimers were presented to distinguish prior art, or for other reasons substantially related to patentability, during the prosecution of any and all parent and related application(s)/patent(s), Applicant(s) hereby explicitly retracts and rescinds any and all such arguments and disclaimers, and respectfully requests that the Examiner re-visit the prior art that such arguments and disclaimers were made to avoid.

The Commissioner is authorized to charge any fees due in connection with the filing of this document to Vista IP Law Group's Deposit Account No. **50-1105**, referencing billing number **VM 03-035-US**. The Commissioner is authorized to credit any overpayment or to charge any underpayment to Vista IP Law Group's Deposit Account No. **50-1105**, referencing billing number **VM 03-035-US**.

Respectfully submitted,

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By: /Gerald Chan/  
Gerald Chan  
Registration No. 51,541

VISTA IP LAW GROUP, LLP  
2160 Lundy Ave., Suite 230  
San Jose, California 95131  
Telephone: (408) 321-8663 (Ext. 203)  
Facsimile: (408) 877-1662